IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO.829 OF 2003
IN
SUIT NO.4267 OF 1995

Rani K. Kothari ....Plaintiff
V/s.
Maheen N. Bachisino & Ors. ....Defendants

Mr.S.S. Shah i/b M/s.Thakordas & Madgavkar for the Plaintiff.
Mr.D' D'mello for the Defendants.

CORAM : S.J. VAZIFDAR, J.
DATED : 17TH NOVEMBER, 2005.

P.C. :

1. By this Notice of Motion, the Plaintiff seeks to restrain the Defendants from collecting the rent from any of the tenants ; transferring the tenancies ; accepting consideration for surrender of the tenancies and from developing the suit property in any manner.

2. The Plaintiff has taken out an earlier Notice of Motion being Notice of Motion No.107 of 1996 for appointment of a Court Receiver and injunction. By an order dated 8.11.2001, F.I. Rebello, J. declined to appoint a Receiver but held that the Plaintiff had made out a prima-facie case. The learned Judge

therefore, held that relief by way of injunction had to be granted to protect the subject matter of the property as the balance of convenience was in favour of the Plaintiff and grave irreparable loss would be caused if the Plaintiff was denied an injunction. The learned Judge made that Notice of Motion absolute in terms of prayer (b) except the bracketed portion which reads "dealing with". Prayer (b) of this Notice of Motion reads as under :-

> "That pending the hearing and final disposal of the suit, the Defendant Nos.1(a) to 1(f) and Defendant No.2 be restrained by an order and injunction of this Honourable Court from in any manner (dealing with), disposing of, encumbering or parting with possession of the said property i.e. all that piece or parcel of land bearing CTS No.691/1, corresponding Survey No.58A, Hissa No.1 (part), Plot No.50 of Paranjpe 'B' Scheme and situate lying and being at Vile Parle (East), Bombay-400 056 together with the building standing thereon known as Moti Mansion consisting of ground and two upper floors and also from entering into any Memorandum or any Agreement for Sale in respect of the said property."

3. It is contended by Mr.Shah, the learned counsel appearing on behalf of the Plaintiff that there is a change in circumstances warranting filing of the present Notice of Motion. The change in

circumstances he contends is that Defendant No.1 has even sold the flat that she occupied in the suit property.

4. It may be possible in a given case to contend that the word "encumbering" would include in its ambit a transfer of tenancy. However, in the present case, it is pertinent to note that the Plaintiff appears to have proceeded on the basis that F.I. Rebello, J. by the said order declined to grant an injunction restraining the Defendants from transferring tenancies. This is clear from ground (x-12) of the Memorandum of Appeal filed in Appeal No.371 of 2002 by the Plaintiffs against the order dated 8.11.2001, which reads as under :-

> "(x-12). The Learned Judge ought to have considered that dealing with the property by allowing the transfer of tenancy rights during the subsistences of the Agreement is not just and proper and it just an attempt to float the obligation imposed upon the Respondents".

5. The appeal was dismissed.

6. It is not necessary for me to grant any injunction restraining the Defendants from putting up any further construction on the suit property as by

virtue of the said order dated 8.11.2001, the Defendants are in any event prevented from doing so. Mr.D'mello, the learned counsel appearing on behalf of the Defendants stated that the Defendants intend constructing on the suit property and inducting tenants therein. Any such attempt would be in clear violation of the order as that would amount to encumbering the property as well as parting with possession thereof and disposing of the same. In that view of the matter, it is not necessary to grant the same relief again in this Notice of Motion. After the order was dictated, Mr.D'mello stated that the present Defendants have no intention of putting up any construction on the suit property.

7. The Notice of Motion is accordingly disposed of.